

# *LEGALEase*

If You Have An  
Auto Accident





## IF YOU HAVE AN AUTO ACCIDENT

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What should you do if you're involved in an automobile accident in New York?

## STOP!

By law, you are required to stop and exchange information.

### With whom?

- Other drivers
- Injured persons
- Owners of damaged property
- Police, if present

### What information?

- Name and address
- Show your driver's license
- Show insurance I.D. card
- Show your vehicle registration

### What if this information is not available at the scene?

Submit the information to the nearest police station or a judicial officer as soon as possible.

### Do I have to call the police?

#### Yes, if someone is injured!

Any time a person is injured, or killed, you are required to immediately notify the police.

#### Yes, if an unknown person's property is damaged!

In the event that other property, such as a parked car, or a traffic sign or device, is damaged, you are required to either locate the owner of such property, or contact the police.

#### Yes, if you feel it is warranted!

Of course, any time you feel it is necessary, request the presence of a police officer or highway official and briefly give the basic facts underlying the accident.

## IF YOU HAVE AN AUTO ACCIDENT

### When am I required to fill out a formal report?

If property damage to one driver exceeds \$1,000, each driver involved in the accident is required to fill out a report.

In the event that any person is injured or killed, you must also fill out a report.

This form is called an **MV-104**, and can be filed with the Department of Motor Vehicles.

This report must be filed no more than **10 days after the accident**.

**BE CAREFUL!** In the event that this report is not filed, the DMV may suspend your driver's license.

You can obtain a copy of your accident report through the local police agency, or the Department of Motor Vehicles.

### What should I do if someone is injured?

Injured persons should receive first consideration!

You should immediately attempt to **call a doctor or an ambulance**. When you contact any emergency personnel, you will need to **identify your location** as quickly and as precisely as possible.

While you are waiting for medical personnel to arrive, make the injured party as comfortable as possible.

You normally should not move an injured person. An exception to this, of course, would be if it remains dangerous for the person to remain in the car. Keep the person warm with blankets or coats. Try to keep the individual conscious, if possible.

Remember, you will need to file a report with the DMV if someone is injured in the accident.

### What information can I collect at the scene?

#### Identify the Drivers and Passengers:

Be sure that either you or the police have obtained the names and addresses of all the other drivers and passengers involved.

## IF YOU HAVE AN AUTO ACCIDENT

### **Identify Vehicles Involved:**

Also, make sure either you or the police have obtained the ownership, license number, year and make of all cars involved in the accident.

If possible, obtain the names of the insurance companies and the policy numbers covering the automobiles in the accident. By law, an insurance company information card must be carried in every vehicle licensed in New York State. These cards can be your source for that information.

### **Take Photographs:**

If you have a traditional camera or a cell phone camera available, take pictures of the accident scene and property damage. These pictures will be helpful to you in the event that a claim is filed against you.

### **Talk to the Police:**

It will be beneficial for you to have an accurate police report regarding the accident. The official report will help you if a later lawsuit is made, or any type of liability claim is made.

Remember to get the name and badge number of any police officials who do appear on the scene.

### **Identify Witnesses:**

Get the names and addresses of as many witnesses as possible. Witnesses will be a tremendous help to you in any subsequent lawsuit. If the police arrive on the scene, the police will attempt to obtain this information themselves. If you can, get the names, addresses and telephone numbers of as many witnesses as possible. If they refuse to identify themselves, jot down their license plate numbers of their automobiles.

Do not discuss the accident with any of the witnesses. Do not give their names to anyone, except for the police, your attorney or your insurance company.

## IF YOU HAVE AN AUTO ACCIDENT

### How can I prevent further injury or damage?

Make every effort to prevent further accidents!

#### **Be Aware of Your Car's Location:**

Vehicles should not be left in a position of danger on the highway or road, if they can be moved. You may be liable for damages to approaching vehicles, unless they are properly warned.

**Passengers should not remain in the vehicles, unless they are injured and cannot move on their own.**

If the highway is obstructed at night, have someone with a flashlight warn approaching motorists. Set out flares and reflectors if they are available.

### What documents and information should I retain from my own records?

#### **Police Reports:**

You can obtain a copy of the police report by contacting the local policy agency, or the New York State DMV.

#### **Driver's Reports:**

In addition, you may want to obtain copies of the other drivers' reports of the accident.

#### **Make Your Own Report:**

You may also wish to keep your own records, and write down the details of the accident. This would include date and time, road conditions, weather conditions, estimated speed of all other cars involved, and any other information which you believe is relevant to the happening of the accident. It is also a good idea to draw a diagram of the accident, showing the position and direction of the cars, just prior to and after the accident.

Remember to keep copies of all correspondence and reports for your own records.

### When should I contact my insurance company?

**IMMEDIATELY!**

Call your insurance representative immediately after the accident.

## IF YOU HAVE AN AUTO ACCIDENT

In addition, send **written notice** to your insurance company as soon as possible. This notice should include the time, place and circumstances of the accident. Keep a copy of this letter for your own records.

If you fail to notify your insurance company of the accident in writing within a reasonable amount of time, this could be grounds for the company's denying any obligation to protect your interest(s) in the event a claim is made against you.

Make sure your report to your insurance company contains the names of all injured persons (including passengers, pedestrians, and drivers) and the names of all available witnesses.

If you are injured, notify your insurance company of your injury and any health care providers immediately.

### **What if I am insured under more than one policy?**

**Notify each and every insurance carrier that you believe has issued a policy which covers either you or the owner of the vehicle.**

You may be insured under any policy which bears your name as the "named insured."

You also may be considered an insured under any policy issued to any resident in your household.

Again, it is necessary for you to notify all insurance companies that may possibly have issued a policy covering your accident.

### **What if claims are made against me?**

Refer all persons making claims against you to your insurance company directly.

Make no payments, or promises to pay to any claimant.

Further, do not make any admissions of fault, as these admissions may possibly be used against you in the later proceeding.

Immediately send your insurance company all legal papers served on you.

In addition, any correspondence you receive from another driver, passenger, or other possible claimant (or attorney thereof), should be forwarded directly to your insurance company.

## IF YOU HAVE AN AUTO ACCIDENT

If the insurance coverage you have purchased is not adequate to cover the claims asserted against you, consult your lawyer at once. Remember, you may have insurance coverage under more than one policy.

### What if it appears I need to make a claim for my own injuries?

If you are injured, see a doctor as soon as possible. Potentially serious and costly injuries may seem trivial at first.

Remember to notify your own insurance company of your injuries in writing as soon as possible.

Notify your health care providers that your injuries were caused by a motor vehicle accident, and provide them with your automobile insurance carrier information.

If the accident occurred in New York, automobile insurance policies include provisions for payments for medical expenses, lost wages and other expenses, regardless of fault.

If you have any questions about your right to sue for either personal injury or property damage, consult your attorney.

### What is no-fault insurance?

Under New York State's compulsory no-fault automobile insurance law, persons injured in a motor vehicle accident are eligible to receive up to \$50,000 in benefits provided they were not intoxicated, drugged or engaged in other specified criminal or anti-social behavior.

**REMEMBER!** These benefits do not cover claims for pain and suffering, and only apply to pecuniary losses, such as medical expenses, lost wages, and other expenses.

These benefits are payable regardless of who was to blame for the accident.

#### **30-Day Rule:**

All **no-fault claims** must be filed within 30 days of the accident.



## IF YOU HAVE AN AUTO ACCIDENT

### 45-Day Rule:

**Medical claims** must be submitted within 45 days of treatment.

### 90-Day Rule:

Claims for **loss of earnings** must be submitted within 90 days of the accident.

### What do no-fault benefits cover?

- All necessary medical and rehabilitation expenses.
- Lost earnings up to \$ 2,000 a month for up to three years from the date of the accident. There is a 20% reduction of actual lost earnings.
- Up to \$25 per day is available for one year after the accident for other reasonable and necessary expenses incurred because of the accident, such as the cost of hiring a housekeeper to perform the household services usually performed by the injured person.

Some policies may contain additional benefits. Its best to look carefully at your own policy and discuss your benefits with your insurance company directly.

### Am I entitled to no-fault benefits if I am a passenger in the accident?

Yes. Generally, no-fault coverage follows the vehicle. You will want to make a no-fault claim on the policy covering the vehicle that you were riding in at the time of the accident.

### How do I know if no-fault applies?

No-fault covers injures sustained as a result of "Use and Operation" of the insured vehicle. Coverage extends to drivers, passengers, bicyclists or pedestrians injured as a result of an accident involving an insured vehicle. Remember, this may include non-traditional accidents and injuries involving a motor vehicle. Any time you think your injury was caused by the use and operation of a motor vehicle, it is best to contact your insurance company and advise them of the incident.

## IF YOU HAVE AN AUTO ACCIDENT

### When can I sue for personal injuries?

New York's automobile liability policies provide a certain amount of benefits without regard to fault. In many cases, your insurance benefits will be sufficient to compensate you for your damages and there is no need to assert a personal injury claim.

However, you retain the right to sue a negligent operator and owner of a covered vehicle for personal injury losses in certain cases:

- If your medical expenses and other economic losses exceed the \$50,000 of benefits under your no-fault insurance.
- If you suffer a "serious injury" as defined by the Insurance Law. If you think you have sustained a serious injury, contact your attorney.
- If the injury results in death.
- If the injured person or the person at fault does not have insurance complying with the New York State minimum provisions.

### What if the other driver is uninsured?

If the other driver is uninsured, claims for damages to your vehicle still will be covered by your own collision or comprehensive insurance policy, if you have one. In addition, your no-fault coverage will cover your medical expenses, lost wages and other expenses up to the first \$50,000.

New York has adopted statutes providing for uninsured and underinsured motorist protection to protect victims of motor vehicle accidents caused by financially irresponsible motorists (i.e., persons driving without insurance).

If you are involved in an accident with an uninsured driver, **contact your insurance company and attorney** immediately. You may be able to

## IF YOU HAVE AN AUTO ACCIDENT

make a claim for your own personal injuries on your own insurance policy.

Ask your insurance company about Uninsured Motorist Protection on your own policy.

### **What if the other driver has a small liability limits?**

Again, your own insurance should cover your property damage, and any expenses covered by no-fault insurance.

If you sustained personal injuries in the accident, and you are involved in an accident with a driver with liability limits less than your own, contact your insurance company and attorney.

In the event that your personal injuries require compensation beyond the other driver's available liability limits, you may be able to make a claim for your own personal injuries on your own insurance policy.

Ask your insurance company about Underinsured Motorist Protection on your own policy.

*This pamphlet, which is based on New York law, is intended to inform, not to advise. No one should attempt to interpret or apply any law without the aid of an attorney. Produced by the New York State Bar Association in cooperation with the Torts, Insurance & Compensation Law Section.*

**SAMPLE**



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